

**Letter of Findings: 01-20210090
Individual Adjusted Gross Income Tax
For the Year 2019**

NOTICE: Under IC § 4-22-7-7 and IC § 6-8.1-3-3.5, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

HOLDING

Out-of-State Individuals provided sufficient documentation permitting them to "net" their "per session" gambling losses and gambling winnings on a "per session" basis in determining the amount of "income" reported on their 2019 Indiana income tax return.

ISSUE

I. Indiana Adjusted Gross Income Tax - Recreational Gambler Losses.

Authority: IC § 6-3-1-3.5, IC § 6-3-2-2; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); I.R.C. § 165; Rev. Rul. 54-339, 1954-2 C.B. 89; I.R.S. Tech. Adv. Mem. 8123015 (February 27, 1981).

Taxpayers, as casual or recreational gamblers, protest the Department's partial refund denial for the 2019 tax year.

STATEMENT OF FACTS

Taxpayers are individuals who reside outside Indiana. During 2019, Taxpayers made repeated visits to a casino in Indiana and played slot machines. For each casino visit, Taxpayers incurred some wagering gains and some wagering losses. For each casino visit, Taxpayers recorded their wagering gains and/or losses on a "per session" (usually per day/per visit) method, which includes the amount of money they chose to play and the amount of money remaining at the end of the session.

Pursuant to Indiana tax withholding requirements, the Indiana casinos withheld income tax on Taxpayers' wagering gains, if any, and issued W-2G forms.

Taxpayers timely filed their 2019 Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return ("IT-40PNR"), claiming that they were entitled to an approximately \$40,000 refund for 2019 on income tax withheld by the Indiana casino on their wagering gains.

Upon reviewing Taxpayers' return, the Indiana Department of Revenue ("Department") granted a partial refund of approximately \$100 but denied the remaining refund amount. The Department did so on the ground that Taxpayers received additional Indiana income during 2019 than what was reported. In effect, the Department found that Taxpayers overstated their Schedule 2 deductions. Taxpayers had originally reported \$91,000 in deductions but the Department reduced that amount to approximately \$20,000.

Taxpayers protested the Department decision denying the bulk of the refund request. A phone hearing was held during which Taxpayers' representatives explained the basis for the protest. This Letter of Findings results.

I. Indiana Adjusted Gross Income Tax - Recreational Gambler Losses.

DISCUSSION

The only issue addressed in this Letter of Findings is whether Taxpayers are permitted to "net" their "per session" gambling winnings and losses when reporting "other income" on their Indiana income tax returns. In other words, are Taxpayers permitted to report only their "per session" net gambling winnings in determining their adjusted gross income?

At the outset, the Department notes that Taxpayers do not claim that they are "professional gamblers" entitled to offset their Indiana gambling winnings against their gambling losses as ordinary and necessary business expenses.

As with any proposed assessment of Indiana tax, it is up to the Taxpayers to establish that the assessment of additional tax was incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In general, IC § 6-3-1-3.5(a) provides that federal adjusted gross income is the starting point for determining Indiana adjusted gross income for individuals. For nonresidents, IC § 6-3-2-2(a) provides that income derived from Indiana sources is subject to Indiana income tax.

For 2019 federal income tax purposes, "Losses from wagering transactions shall be allowed to the extent of the gains from such transactions." I.R.C. § 165(d). "For Federal income tax purposes, all wagering gains must be included in gross income. Losses therefrom, by a taxpayer who is not in the trade or business of gambling, are not deductible in determining adjusted gross income because such losses do not come within the provisions of section 22(n) [now I.R.C. § 62] of the Internal Revenue Code. Nor are the losses deductible from adjusted gross income in determining net income where the taxpayer has elected to use the standard deduction." Rev. Rul. 54-339, 1954-2 C.B. 89. As such, the effect of this federal tax treatment is that Indiana does not permit a deduction for wagering losses except for professional gamblers.

Within the definition of "wagering gains," the measure of the gains included in income has been an issue with both Department and the Internal Revenue Service. As an example, and not from the instant protest, a player enters a casino and wagers \$10,000 on a slot machine in one day. The player has three wins, one for \$10,000, one for \$5,000, and one for \$3,000. Each time the wager is \$20. The question is then whether the player's income is the \$18,000 gross winnings less the \$60 wagers resulting in wins as an offset - in other words, \$17,940 - or the income is the \$8,000 net "per session" profit.

In 1981, the Internal Revenue Service issued I.R.S. Tech. Adv. Mem. 8123015 (February 27, 1981). In that TAM, an individual wagered \$2 on the results of jai-alai matches. His wagers were structured so that he entered up to 315 combinations of wagers each day. Under one approach, if he bought 200 tickets but only one ticket won for \$500, he would report \$498 (\$500-\$2) income and \$398 (199 losing tickets times \$2) losses. Based on this method, his income totaled \$91,000, while his losing tickets cost \$98,000.

A second method was suggested as well. Under the second method, his \$500 winnings would be netted against the \$400 total tickets purchased on that day for \$100 income and no losses. Based on the alternative method, his income totaled \$22,000, while his losses totaled \$29,000.

The 1981 memorandum reasoned that each ticket constituted a separate wager for purposes of I.R.C. § 165(d) and I.R.C. § 3402(q) (relating to withholding on gambling winnings). Thus, the individual had income of \$91,000 for federal income tax purposes.

Nevertheless, the reasoning stated in the 2008 IRS memorandum is persuasive here. That reasoning concludes that aggregating winnings and losses occurring in a particular period - then including the net winnings as income - is the proper measure for determining wagering gains for federal income tax purposes. In other words, gambling income equates to winnings minus losses whenever winnings exceed losses. Further, as a matter of recordkeeping by taxpayers, a "per session" netting approach is a less cumbersome recordkeeping requirement—for instance, keeping a log reflecting one session entry as opposed to potentially hundreds of individual entries—and a recordkeeping requirement more consistent with the reality of actual wagering behavior. The treatment of wagering income is determinative regardless of the withholding and reporting requirements under state and federal law.

Taxpayers have provided this description of the documentation detailing their casino winnings and losses.

- Schedule of gambling winnings as report on Federal Return which shows winnings of [] as limited to per Session Day, with [Indiana casino], which constitutes Indiana gambling activity;

- Schedule of Indiana gambling activity summarized by Day/Session;
- Detail of Indiana gambling activity provided by [Indiana casino];
- Taxpayer's handwritten diary listing date, amount, jackpots, wins, losses, state tax, federal tax;
- The Indiana casino's "coin in coin out" spreadsheet;
- Taxpayer's own Excel spreadsheets containing gambling activities.

As casual gamblers, the IRS requires additional documentation; the IRS requires; (1) casino "cash out slips;" (2) casino "player card activity;" (3) casino "cash-out sheets;" (4) casino "payout slips;" (5) individual, personal gambling activity diaries. See IRS Publications 17 and 529.

Taxpayers are on notice that they are required to provide the documentation as noted above and are asked to provide any additional information within 30 days from the date this decision is issued. Subject to the Audit Division's review of the documentation provided, the Department agrees that Taxpayers are entitled to "net" their slot machine "winnings" against their slot machine "losses" on a per-session basis.

FINDING

On the sole issue of whether Taxpayers are entitled to offset their gambling winnings and losses on a per-session basis, Taxpayers' protest is sustained to the extent set out in this Letter of Findings.

October 26, 2021

Posted: 12/29/2021 by Legislative Services Agency
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